



Comptroller General  
of the United States

Washington, D.C. 20548

145659

## Decision

**Matter of:** Tri-Services, Inc.

**File:** B-245698

**Date:** January 15, 1992

R.W. Sutliff for the protester,  
James J. Gildea, Esq., Department of the Army, for the  
agency.  
Barbara R. Timmerman, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Bidder's failure to include information with its bid concerning labor overhead and general and administrative costs did not render bid nonresponsive since the information was not relevant to bid evaluation and did not affect the bidder's performance obligation.

### DECISION

Tri-Services, Inc. protests the proposed award of a contract to Quantum Research International, Inc. under invitation for bids (IFB) No. DAAH01-91-B-0019 issued by the Department of the Army for telemetry support services to monitor the performance of HAWK missiles during live firings. Tri-Services, the third low bidder, contends that the first and second low bids should be rejected as nonresponsive.

We deny the protest.

The IFB, a small business set-aside, contained 12 contract line items (CLINS). Bidders were required to insert prices for the first nine line items. The remaining 3 line items, 0010, 0011, and 0012, were cost reimbursement items for material, travel and maintenance of government furnished equipment. With respect to these items, the IFB provided under Paragraph M-3, Evaluation Factors for Award, "CLINS 0010, 0011, 0012 are cost reimbursable line items in which the government will establish the dollar amount at the time of award. The offerors are not required to submit costs for the aforementioned CLINS."

In amendment No. 001 to the solicitation, the Army stated that for line item 0011, the amount allowable for billing by the contractor would be actual costs only, without labor overhead, general and accounting costs (G&A) or profit. In a subsequent amendment to the solicitation, amendment No. 006, the Army changed its initial position with respect to labor overhead and G&A for line item 0011. The Army stated in the amendment that after further investigation, it had determined that G&A and labor overhead would be allowed and that "The Potential Bidders are required to submit the most current G&A and Labor Overhead rates at the time of proposal submission." In amendment No. 0010 to the solicitation, the Army inserted the following language at paragraph A-7:

"Additionally, the potential bidders are required to submit their most current general and administrative (G&A) and labor overhead rates at the time of proposal submission along with any and all applicable documents in accordance with the statement of work and the solicitation."

The Army received three bids in response to the IFB. Quantum Research was the low bidder with a price of \$281,977.70. Tri-Services was the third low bidder with a price of \$484,370.00. Neither Quantum nor Technical Assistance International, Inc., the second low bidder, submitted the requested G&A and labor overhead rates. Tri-Services then filed a protest with our Office contending that the other bidders were both nonresponsive and that it should receive the award. The Army determined that urgent and compelling circumstances required award of line item 0002AA concerning support services for HAWK missile firings in Crete scheduled for October 13, 1991 and made award to Quantum. Performance of the remainder of the contract has been stayed pending our decision.

Tri-Services argues that the two low bids should both be found nonresponsive because they did not contain current G&A and labor overhead rates as required by the solicitation. The protester points to the language in paragraph A-7 as proof that failure to supply the requested information should make a bid nonresponsive. The protester also argues that the requirement cannot properly be waived as a minor irregularity since the financial data is a material matter. Finally, Tri-Services asserts that failure to furnish the information is equivalent to marking the data "proprietary" which would render the bids nonresponsive.

Responsiveness deals with a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or service called for by the material terms of the IFB. American Spare Parts, Inc., B-224745, Jan. 2, 1987, 87-1 CPD ¶ 4. A solicitation requirement is not material, however,

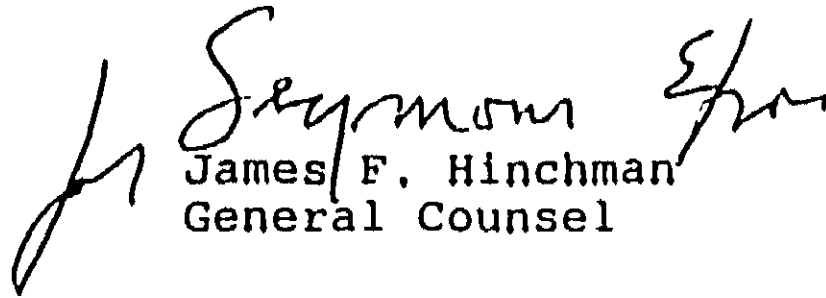
if the government does not need the information in order to evaluate bids or the information does not have an impact on the bidder's promise to perform as specified, Essex Electro Engineers, Inc., B-232675, Jan. 18, 1989, 89-1 CPD ¶ 44.

The labor overhead rates and general and administrative costs requested had nothing to do with the evaluation of bids here. The solicitation incorporated FAR clause 52.214-10 which provides that the contract will be awarded to the responsible bidder whose bid, conforming to the solicitation, would be most advantageous to the government considering only price and price related factors specified elsewhere in the solicitation. Under section M, Evaluation and Award Factors, the solicitation stated offerors were not required to submit costs for line items 0010 through 0012. We find no indication in the record that award was to be made on the basis of anything other than the fixed price line items. Consequently, the labor overhead and G&A costs required by the solicitation were not needed to evaluate the bids.

We also do not see how the omission of the requested information has any effect on the bidder's obligation to perform. Where the omitted information is not material to establishing whether the bidder is legally obligated to perform in accordance with the terms of the IFB, the omission may generally be waived as a minor irregularity. See Alaska Industrial Resources, Inc., B-236043, Oct. 26, 1989, 89-2 CPD ¶ 382. With respect to paragraph A-7, which the protester cites as support for its position that failure to supply the information renders the bid nonresponsive, that paragraph, provides only that bidders are required to submit their G&A and labor overhead rates at the time bids are submitted. Such language does not alter the materiality of a requirement. A solicitation requirement is not

material simply because bidders are warned that bids will be rejected should they fail to furnish information. American Spare Parts, Inc., B-224745, supra.<sup>1</sup>

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>1</sup>Tri-Services initially argued that since the financial information it provided was proprietary in nature, the failure of the other bidders to furnish this information was equivalent to their providing the data subject to an impermissible proprietary restriction. The protestor abandoned this argument when the agency responded that the protestor's data had not been disclosed at bid opening.